

CalSavers - California Code of Regulations

Current Codes with Proposed Amendments

10 CCR § 10000

§ 10000. Definitions.

The following definitions shall apply wherever the terms are used throughout this Chapter:

- (a) "Account" means a Participant's Individual Retirement Account ("IRA") held within the Program.
- (b) "Administrator" means the third-party administrator that operates the Program.
- (c) "Automatic Escalation" means an automatic annual increase in a Participating Employee's Contributions as set forth in Section 10005.
- (d) "Beneficiary" means the individual(s) or entity(ies) entitled to receive the proceeds of a Participating Employee's or Participating Individual's Account upon their death.
- (e) "Board" means the CalSavers Retirement Savings Board.
- (f) "Client Employer" means an Employer that is involved in a Multi-Party Employment Relationship due to obtaining the services of a third-party entity.
- (g) "Compensation" has the same meaning as defined in Title 26 Code of Federal Regulations Section 1.415(c)-2(d)(4) (April 5, 2007), which is incorporated herein by reference. In the case of a sole proprietor, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or another self-employed individual, Compensation means such individual's Earned Income.
- (h) "Contribution" means any monies contributed to an Account.
- (i) "Contribution Rate" means the percentage of a Participating Employee's Compensation to be withheld and contributed to their Account via payroll deduction under the Program.
- (j) "Earned Income" means an individual's net earnings from self-employment from the Participating Employer as determined under Section 401(c)(2)(A) of Title 26 of the United States Code.
- (k) "Electronic Fund Transfer" has the same meaning as the term established under Section 1693a(7) of Title 15 of the United States Code.
- (l) "Eligible Employee" means any Employee of an Eligible Employer who is at least eighteen years of age.
- (m) "Eligible Employer" means an Employer that (i) has one or more Employees, as determined under the methodology described in Section 10001(a), at least one of whom is an Eligible Employee; (ii) does not maintain or contribute to a Tax-Qualified Retirement Plan; and (iii) is not the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities.
- (n) "Employee" means any individual who has the status of an employee under Unemployment Insurance Code Sections 621, 621.5, 622, or 623 and who receives a W-2 with California wages. In the case of an Eligible Employer that is a sole proprietorship, partnership, or a limited liability company treated as a sole proprietorship

or partnership for federal income tax reporting purposes, Employee shall also mean a sole proprietor, partner, or member of a limited liability company treated as a sole proprietor or partner for federal tax purposes.

(o) "Employee Information Packet" means the packet of information provided by the Program that includes the Opt-Out Form, instructions on how to opt out of the Program, and other information required under Government Code Section 100014.

(p) "Employer" means a sole proprietor, partnership, limited liability company, Subchapter C or Subchapter S corporation, trust, or other entity, whether for profit or not for profit, that is an employer under California Unemployment Insurance Code Division 1, Part 1.

(q) "Exempt Employer" means an Employer that (i) has zero Employees, as determined under the methodology described in Section 10001(a), has one or more Employees, but does not employ any Eligible Employees, or who does not employ any individuals other than the owners of the business; (ii) maintains or contributes to a Tax-Qualified Retirement Plan; or (iii) is the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities.

(r) "IRA" means an individual retirement account or individual retirement annuity under Section 408(a), 408(b), or 408A of Title 26 of the United States Code.

(s) "Multi-Party Employment Relationship" means a relationship in which an Employer enters into a service contract with a third-party entity(ies) for services including, but not limited to, payroll, staffing (both temporary and non-temporary), human resources, and Employer compliance with laws and regulations.

(ss) "Noncompliance" means the failure of an Eligible Employer to allow an Eligible Employee to participate in the Program.

(t) "Opt-Out Form" means the form through which Eligible Employees may note their decision to opt out of participation in the Program.

(u) "Participant" means any person who is or was a Participating Employee, Participating Individual, or Beneficiary.

(v) "Participating Employee" means any person who is an Eligible Employee, is enrolled in the Program, maintains a Program IRA, and is not a Participating Individual.

(w) "Participating Employer" means an Eligible Employer that registered with the Program to provide its Eligible Employees access to the Program.

(x) "Participating Individual" means any person who enrolled in the Program independent of an employment relationship with an Eligible Employer, as further defined in Section 10006; maintains an Account; and is not a Participating Employee.

(y) "Program" means the CalSavers Retirement Savings Program offered by the CalSavers Retirement Savings Trust.

(z) "Tax-Qualified Retirement Plan" means a retirement plan that qualifies for favorable federal income tax treatment under Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of Title 26 of the United States Code. An employer-provided payroll deduction IRA program that does not provide for automatic enrollment is not a Tax-Qualified Retirement Plan.

§ 10001. Eligible Employers.

(a) To determine whether an Employer is an Eligible Employer for a calendar year, an Employer's number of employees shall be the average number of employees during the previous calendar year, as reported to the Employment Development Department on Form DE 9C, "Quarterly Contribution Return and Report of Wages (Continuation)," for the quarter ending December 31 and the preceding three quarters.

(1) Employers that have not submitted Form DE 9C, "Quarterly Contribution Return and Report of Wages (Continuation)," for a full calendar year are Eligible Employers if they have submitted at least one Form DE 9C, "Quarterly Contribution Return and Report of Wages (Continuation)," for the preceding quarter and otherwise meet the definition of an Eligible Employer.

(2) Employers that have not submitted Form DE 9C, "Quarterly Contribution Return and Report of Wages (Continuation)," for a full calendar year shall be subject to the registration deadline established in Section 10002(b) only after it has submitted a Form DE 9C, "Quarterly Contribution Return and Report of Wages (Continuation)," for the Quarter ending December 31 and the preceding three quarters.

(b) An Employer shall cease to be an Eligible Employer either upon the effective date of its adoption of, or participation in, a Tax-Qualified Retirement Plan or if it ceases to employ any Employees.

(c) Each Participating Employer that ceases to be an Eligible Employer shall notify the Administrator within 30 days of the Employer's change in status through one of the methods established in Section 10002(e).

(d) Exempt Employers may, but need not, inform the Administrator of their exemption from the Program using one of the methods established under Section 10002(e).

(e) Multi-Party Employment Relationships.

(1) For a temporary services Employer or leasing Employer defined in California Unemployment Insurance Code Section 606.5(b), the Eligible Employer shall be the temporary services Employer or leasing Employer.

(2) For a professional employer organization defined in Section 7705 of Title 26 of the United States Code that enters into a contract with a Client Employer, the Eligible Employer shall be the Client Employer regardless of whether the professional employer organization is certified pursuant to Section 7705.

(3) For a motion picture payroll services company defined in California Unemployment Insurance Code Section 679(f)(4), the Eligible Employer shall be the motion picture production company defined in California Unemployment Insurance Code Section 679(f)(5).

§ 10002. Employer Registration.

(a) Registration Deadlines.

(1) Eligible Employers employing more than 100 Employees shall register with the Program no later than September 30, 2020.

- (2) Eligible Employers employing more than 50 Employees shall register with the Program no later than June 30, 2021.
- (3) Eligible Employers that have employed five or more Employees for more than one continuous calendar year, based on the criteria established in Section 10001(a), shall register with the Program no later than June 30, 2022.
- (4) Eligible Employers with four or fewer Employees shall register with the Program no later than December 31, 2025.
- (b) An Employer that becomes an Eligible Employer due to having an average of five or more employees for a calendar year, as established in Section 10001(a), shall register with the Program no later than December 31 of the year in which the Employer is notified by the Program about their eligibility.
- (c) An Employer's number of employees shall be determined under the methodology prescribed in Section 10001(a).
- (d) Exempt Employers are prohibited from participating in the Program.
- (e) An Eligible Employer shall register with the Program using the Program's website (employer.calsavers.com), by phone (855-650-6916), by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459), or by regular mail (CalSavers, P.O. Box 55759, Boston, MA 02205-5759).
- (f) In order to register, an Eligible Employer shall provide the following information to the Administrator through one of the methods listed in subsection (e):
- (1) Employer name, legal name, and "doing business as" name, if applicable;
 - (2) Federal Employer Identification Number and the California Employer Payroll Tax Account Number;
 - (3) Employer mailing address;
 - (4) Employer physical address; and
 - (5) Name, title, phone number, and email address of an individual designated by the Employer as the primary contact for the Program.

§ 10003. Participating Employer Duties.

- (a) Within 30 days of registration, a Participating Employer shall provide the following information to the Administrator for each Eligible Employee:
- (1) Eligible Employee's full legal name;
 - (2) Eligible Employee's Social Security Number or Individual Taxpayer Identification Number;
 - (3) Eligible Employee's date of birth;
 - (4) Eligible Employee's physical address;
 - (5) Eligible Employee's phone number, if available; and
 - (6) Eligible Employee's email address(es), if available.
- (b) For each Eligible Employee hired by a Participating Employer after registering with the Program, the Participating Employer shall provide the information specified in subsection (a) to the Administrator within 30 days of the Eligible Employee's hire date.
- (c) Participating Employers shall remit each Participating Employee's Contribution each payroll period to the Administrator at the applicable Contribution Rate no later than the first payroll period following 30 days after notification by the Administrator of the

Participating Employee's enrollment. The Contribution Rate shall be established by the Participating Employee and reported to the Employer by the Administrator through the Program's website (employer.calsavers.com).

(1) Participating Employers shall remit all withheld Compensation to the Administrator as soon as administratively practicable, not to exceed seven business days from the date of deduction.

(d) Participating Employers shall not:

(1) Require, endorse, encourage, prohibit, restrict, or discourage employee participation in the Program.

(2) Provide Participating Employees or Beneficiaries of deceased Participating Employees advice or direction regarding investment choices, Contribution Rates, participation in Automatic Escalation, or any other decision about the Program.

(3) Remit any Contributions for any Eligible Employee who opted out of the Program.

(4) Exercise any authority, control, or responsibility regarding the Program, other than as set forth in this Section.

§ 10004. Employee Enrollment.

(a) The Program shall deliver the Employee Information Packet to each Eligible Employee within 10 days of the Participating Employer completing the actions required under Section 10003(a) or 10003(b).

(b) An Eligible Employee shall be enrolled into the Program if they do not opt out within 30 days after the date the Employee Information Packet is delivered. The information prescribed in Section 10003(a) will be used by the Administrator to execute the enrollment.

(c) An Eligible Employee is deemed to have read and understood the content in the Employee Information Packet if the Eligible Employee has been furnished a copy of the Employee Information Packet pursuant to subsection (a) and has been provided an opportunity to opt out of the Program.

(d) An Eligible Employee may opt out of the Program at any time. Eligible Employees may opt out either electronically (saver.calsavers.com), by phone (855-650-6918), or by completing the Opt-Out Form and submitting the form by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459) or by regular mail (CalSavers, P.O. Box 55759, Boston, MA, 02205-5759).

(1) To opt out by overnight mail or regular mail, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, ZIP Code, and sign the form.

(2) To opt out electronically or by phone, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, and ZIP Code.

(e) Eligible Employees who opt out of the Program may enroll at any time through one of the methods established in subsection (d), by providing the information specified in Section 10003(a) to the Administrator.

(f) If the Administrator is unable to enroll an Eligible Employee, the Administrator shall notify the Participating Employer within 15 days after the Administrator's attempt to

enroll the Eligible Employee. Within the notice, the Administrator will provide instructions to the Participating Employer not to remit Contributions for the Eligible Employee.

§ 10005. Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants.

(a) Upon enrollment, a Participating Employee who has not made an alternative election as specified in this Section shall make Contributions to the Program according to the following default elections:

(1) At a Contribution Rate of 5%.

(2) Have Contributions subject to Automatic Escalation whereby the Contribution Rate shall increase by an additional 1% of Compensation on each January 1 following the Participating Employee's enrollment, up to a maximum Contribution Rate of 8%.

(A) Participating Employees who choose an alternative Contribution Rate shall have Contributions subject to Automatic Escalation unless they choose to opt out of Automatic Escalation by notifying the Administrator using one of the methods identified in Section 10004(d).

(B) A Participating Employee who has not participated in the Program for at least six consecutive calendar months during a calendar year shall not have Contributions subject to Automatic Escalation until the January 1 that follows the next calendar year in which the Participating Employee has at least six calendar months of participation.

1. The Administrator shall notify the Participating Employee of the Automatic Escalation increase at least 60 days before January 1 to provide the Participating Employee an opportunity to opt out of Automatic Escalation.

(3) Have Contributions made to a Roth IRA. The Program will establish the IRA on behalf of Participating Employees that have not established an IRA for themselves utilizing the information required by Section 10003(a).

(4) Have Contributions invested in the default investment option.

A Participating Employee who has not made an alternative election shall have all Contributions invested in a capital preservation investment for 30 days. After those 30 days have elapsed, unless the Participating Employee makes an alternative election, the Participating Employee's Contributions shall be invested in a Target Date Fund based on the Participating Employee's age as reported on the Program's records and an assumed retirement at age 65.

The applicable Target Date Fund shall be determined as described in the following table:

<i>Date of Birth</i>	<i>Target Retirement Years</i>	<i>CalSavers Fund Name</i>
12/31/1947 or Earlier	2012 or earlier	CalSavers Target Retirement Fund
1/1/1948 - 12/31/1952	2013 - 2017	CalSavers Target Retirement 2015 Fund
1/1/1953 - 12/31/1957	2018 - 2022	CalSavers Target Retirement 2020 Fund
1/1/1958 - 12/31/1962	2023 - 2027	CalSavers Target Retirement 2025 Fund
1/1/1963 - 12/31/1967	2028 - 2032	CalSavers Target Retirement 2030 Fund
1/1/1968 - 12/31/1972	2033 - 2037	CalSavers Target Retirement 2035 Fund
1/1/1973 - 12/31/1977	2038 - 2042	CalSavers Target Retirement 2040 Fund
1/1/1978 - 12/31/1982	2043 - 2047	CalSavers Target Retirement 2045 Fund
1/1/1983 - 12/31/1987	2048 - 2052	CalSavers Target Retirement 2050 Fund
1/1/1988 - 12/31/1992	2053 - 2057	CalSavers Target Retirement 2055 Fund
1/1/1993 - 12/31/1997	2058 - 2062	CalSavers Target Retirement 2060 Fund
1/1/1998 - 12/31/2002	2063 - 2067	CalSavers Target Retirement 2065 Fund
1/1/2003 - 12/31/2007	2068 - 2072	CalSavers Target Retirement 2070 Fund
1/1/2008 or later	2073 - or later	[Funds to be added later - not a valid Participant age]

(b) Participants may make an alternative election at any time through one of the methods established under Section 10004(d).

(1) A Participating Employee may elect a Contribution Rate other than the default Contribution Rate at any integer between 0% and 100% of Compensation.

(2) A Participating Employee may opt out of Automatic Escalation or elect an alternative Automatic Escalation percentage at any time by notifying the Administrator using one of the methods established in Section 10004(d).

(3) A Participating Employee may elect to make recurring non-payroll Contributions of at least \$10 each to their Account. Such recurring non-payroll Contributions may be made at least as frequently as weekly, once every two weeks, twice monthly, or monthly and must be made through Electronic Fund Transfer.

(4) A Participating Employee may also elect to make non-recurring non-payroll Contributions. Such Contributions must be made through Electronic Fund Transfer or by personal check and must be a minimum of at least \$10.

(5) A Participant may elect one or more investment options for any portion of their existing balance or future contributions. Participants may make this alternative election by notifying the Administrator using one of the methods established in Section 10004(d).

(6) Alternative contribution elections (including Contribution Rates, Automatic Escalation and opt out elections) shall be implemented as soon as administratively practicable but no later than the first payroll period following 30 days after notification to the Administrator of the alternative election.

(c) Other Contribution and Investment Election Rules

(1) Participating Employers are prohibited from contributing to a Participating Employee's Account.

(2) An individual who is both a Participating Employer and a Participating Employee may make Contributions to their own Account under the same terms and conditions as other Participating Employees.

(3) Amounts withheld by the Participating Employer shall not exceed the amount of the Participating Employee's Compensation remaining after any payroll deductions required by law to have higher precedence, including a court order.

(4) A Participant may elect to recharacterize all or some of their Contributions to a Traditional IRA by phone (855-650-6918).

§ 10006. Individual Participation.

(a) An individual who is at least eighteen years of age, and who is not an Eligible Employee may elect to participate in the Program as a Participating Individual outside of an employment relationship with an Eligible Employer. An individual may enroll in the Program through any of the methods established in Section 10004(d) by providing the information required in Section 10003(a).

(b) Any recurring Contribution by a Participating Individual must be made at least as frequently as weekly, once every two weeks, twice monthly, or once monthly and must be made through Electronic Fund Transfer, and must be at least \$10.

(c) Participating Individuals may make non-recurring Contributions. Non-recurring Contributions must be in an amount of at least \$10 and must be made through Electronic Fund Transfer or by personal check.

(d) Businesses that use the services of Participating Individuals have not elected to participate in the Program merely because they, at the request of Participating Individuals, choose to facilitate remittance to the Administrator for deposit into a Participating Individual's Account all or a portion of the money owed to such Participating Individuals. Exempt Employers that choose to facilitate deposits to a Participating Individual's Account shall take all steps necessary to ensure their payroll deduction IRA program is not an employee benefit plan regulated under Title 1 of the Employee Retirement Income Security Act (ERISA).

§ 10007. Contributions and Distributions.

(a) It shall be the responsibility of the Participant to determine whether they are eligible to make Contributions to a Roth IRA or Traditional IRA (when available) and whether the amount of their Contributions to a Roth IRA or Traditional IRA (when available) complies with the limits established under Title 26 of the United States Code.

(b) A Participant may choose to rollover or transfer funds into their Account.

§ 10008. Enforcement of Employer Compliance.

(a) The Board may delegate enforcement of employer compliance with Title 21 (commencing with Section 100000) of the Government Code, including all failures by an Eligible Employer to allow its Eligible Employees to participate in the Program, to the Board staff. Staff shall exercise due diligence to ensure reasonable attempts are made

to bring employers into compliance prior to issuing a final notice of penalty application to a noncompliant Employer.

(b) Enforcement efforts by Board staff, pursuant to subsection (a), shall include email and letter notifications of penalty application to the noncompliant Employers identifying the cause of their noncompliance, the methods available to Employers to comply, and the date by which the noncompliant Employer must come into compliance before collection is referred to the Franchise Tax Board as described in Section 19287 of the Revenue and Taxation Code. .

(c) Noncompliant employers are subject to the penalties set forth in Gov. Code Section 100033(b) until compliance is satisfied.

(i) A noncompliant employer, who fails to obtain compliance after the initial penalties are assessed, will be fined \$500 per employee for each subsequent calendar year;

(ii) Non-compliance does not need to be consecutive to assess the \$500 penalty. Any calendar year of non-compliance after the initial penalty will result in a \$500 penalty.

(d) If at any time through the collection efforts of the Franchise Tax Board as described in Cal Code Regs. tit. 18 § § 19285 et seq., a noncompliant employer is brought into compliance before the penalty payment is received through the submission of written documentation, or as determined by review of the employer's account status, then the Board staff shall inform the Franchise Tax Board that the penalty shall not be imposed due to the Eligible Employer's compliance with the requirements of Title 21 (commencing with Section 10000) of the Government Code. Any erroneously made payments shall be refunded.